In The

Supreme Court of the United States

OCTOBER TERM, 1970

THE ROCKET FREIGHT LINES CO.,
Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD
Respondent

and

TULSA GENERAL DRIVERS,
WAREHOUSEMEN & HELPERS
LOCAL UNION 523,
Respondent

No. 666

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR LOCAL UNION 523 IN OPPOSITION

Opinions Below

The Decision and Order of the National Labor Relations Board dismissing the complaint based upon the charge made by petitioner Rocket Freight Lines against Respondent Union is reported at 176 NLRB No. 94.

The Opinion of the Court of Appeals for the Tenth Circuit, affirming the dismissal, is reported at 427 F. 2d 202.

Jurisdiction

The jurisdictional requisites are adequately set forth at petition, page 2.

Question Presented

Did the Union commit an unfair labor practice with the meaning of 29 U.S.C. §158(b)(1)(A) by fining members who returned to work across a picket line during the course of a lawful strike?

Statute Involved

Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A), provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its rules with respect to the acquisition or retention of membership therein; . . .

Section 7 of the National Labor Relations Act, 29 U.S.C. 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Statement of the Case

Petitioner's Statement of the Case (Petition, pp. 3-6 and 14ff.) is so at odds with the Board's "Findings of Fact" (Petition Appendix A, pp. 4-14) as to require restatement of the case, viz:

Respondent Union imposed fines upon those of its members who crossed their own picket line and returned to work during the course of a strike for a new contract. The breaking of the picket line occurred after negotiators for the Local Union had agreed upon contract terms with the employer, subject to approval by the International. Such approval was not forthcoming, for the Local's negotiators' acquiescence was to a contract which was 50¢ per hour below the national scale.

The complaint upon which the case was tried sought to distinguish *NLRB v. Allis Chalmers,* 388 U. S. 175, on the assertion that the picketing was unlawful in "that when the employees in question returned to work..." crossing the picket line of their own local union, their was a contract in effect.

The theory of the prosecution was that since the strike had assertedly ended, and a contract had assertedly become effective — the picketing was thus "illegal" or "unprotected"; and since *Allis Chalmers* had dealt with a lawful strike— and a lawful picket line, the instant situation was distinguishable.

But the facts as found by the Board's Examiner,

confirmed on review by the Board, and held amply supported by the Court of Appeals were that the bargaining concerned both the Local and the International Union, and that the employer and all parties had a "clear understanding" that a binding contract was conditioned on the International's approval. Such approval was not given; *ergo* no contract. The Circuit Court observed that "the record amply supports this finding," 427 F. 2d 202 at 205.

More specifically, a strike for a collective bargaining agreement began June 7.

By June 22 the bargaining representatives reached agreement, subject to (1) ratification by the Rocket employees, and (2) approval by the International Union.[1]

Thus, as of June 22, there were two conditions precedent to agreement: (1) ratification by the Rocket employees; and (2) approval by the other union parties to the agreement, i.e. the Southern Conference and the National Committee.

The first condition was satisfied, in that a majority of the employees in Oklahoma voted to ac-

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[1]There was also an understanding that the agreement was not final until approved by the Southern Conference of Teamsters and the International Negotiating Committee. Rocket President Crook admitted that he was aware of the necessity for International ratification, and that it had been made clear in the course of negotiations that agreement was dependent on International approval. Additionally, Rocket's Board Chairman, Jenkins, admitted that during the course of negotiations "Mr. Mandoiza did bring up that it would have to be approved by the International."

cept the contract; though the vote in Tulsa (the respondent-local) was 19 against ratification; 15 in favor of ratification, and 5 disputed ballots were undertermined.

The second condition was not met until July 26, when the contract was signed. Meanwhile, the strike and picketing continued until July 19. No work was conducted at Rocket's Tulsa terminal until several of the striking employees broke ranks and went to work on July 17.

In the period from June 29 (when word of the International's rejection of the contract was received), to July 19, Teamsters were continuing the strike in an effort to force Rocket to more nearly approach the National contract wage standards. Rocket was opposing this effort by meetings with employees, advising them that continuation of the strike would result in Rocket's liquidating its business, and throwing the employees out of their jobs.

The Company's propaganda and "back to work" efforts were successful in persuading several of the strikers to go back to work on July 17.

So by July 19, it became apparent to Union leaders that the position of those who were seeking to attain higher wages and improved conditions was so deteriorating that on that date the picketing was abandoned, and the strike broken.

With the breaking of the strike, it became ap-

parent that it was hopeless for International to hold out longer. So the contract was signed, on the employer's terms.

In early August, charges were brought against seventeen members of Respondent Local Union "for breaking their own picket line," and they were each notified to appear before its Executive Board to answer charges asserting that they had broken the picket line. Hearing on these charges was held pursuant to ample notice.

A written decision was rendered which after procedural recitals, summarized the evidence and found, *inter alia,* that seventeen named members of the Local Union, on July 17, 1967, knowing that there was "a legal and valid picket line . . . crossed said picket line and returned to work." It was also noted in the findings that: "Each of the accused admitted that on Monday, July 17, without the Local Union's approval, that they returned to work across their own picket line."

The Local Union Executive Board accordingly found the cited members "guilty as charged of violating Article XIX, §7 of the Teamster's constitution," and assessed a fine against each of them.

On the above facts the NLRB found that there was no contract absent acquiescence by International; that in the absence of contract, the strike was lawful, that picketing in support of the strike was lawful and that the Union could lawfully dis-

cipline those of its members who violated the picket line.

ARGUMENT

This is a factual case. Petitioner's rendition of the facts is far removed from the facts of record and found by the Board. When viewed in the perspective of the facts as found by the Board, which the Court of Appeals has held to be "amply" supported by the record, it comes clear that there is no conflict of decisions.

This case is governed by *NLRB v. Allis Chalmers*, 388 U.S. 175, sustaining the Board's holding, 149 NLRB 67, that a union does not violate §8(b)(1)(A) of the Act when it imposes and enforces fines upon members who crossed a lawful picket line in support of a lawful strike.

Here the strike was lawful—in an effort to prevent employer from broadening the wage differential existing as between that paid by truckers throughout the nation, and that paid by Rocket. International has a legitimate interest in seeing that the wage differential is not widened.

Implementing that legitimate interest, the National Union officials withheld approval of a grossly substandard agreement.

Employer countered by threatening to close its doors; and providing transportation in the Com-

pany airplane to petition circulators, who had become convinced that the employer's threat to liquidate was not an idle one.

The principal means by which the Union could defend against this employer's assault on its wage standards, was to maintain strike solidarity. The picket line was important in its maintenance. Accordingly, reliance upon the solidarity and loyalty of the strikers was basic to maintenance of wage standards. Union had a right to discipline those whose lack of loyalty to the Union's aims, served to undercut its bargaining power. *Allis-Chalmers*, 388 U.S. at 181:

> "Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[the] power to fine or expel strike breakers is essential if the union is to be an effective bargaining agent. . .'"

Nor is Petitioner's case improved by redundant appeal to the principle of "majority rule"; for the question which Petitioner ignores is: "A majority of what?" Not a majority of the more than 2,000 members of the Respondent Tulsa Local, not a

majority of those covered by the National Contract, not even a majority of the Tulsa Rocket employees; for 19 of these voted against ratification—only 15 for ratification.

There is no evidence to support the redundant assertion that the contract was "acceptable to the Union membership," as the attack on the Board's decision asserts.

True, a majority of Rocket's Oklahoma employees voted to ratify the contract. But the contract is not with the employees—it is with the bargaining agent, which consists of three Oklahoma Local Unions, plus the National Over-the-Road, etc. Negotiating Committee, plus the Southern Conference of Teamsters.

And a bargaining agent is not required as a matter of law to accede to the wishes of an infinitesimal minority of those covered by an area or national contract.

Multi-employer bargaining is an established fact. Cf. *NLRB v. Truck Driver's Union*, 353 U.S. 87 at 94; 1 L. Ed. 2d 676 at 680-681. It could not operate if the majority of those employed by a single employer (yet constituting a miniscule minority of those covered by the multi-employer contract) could impose their will upon the vast majority and, as here attempted, force conclusion of a contract.

which is more than fifty cents an hour below the scale which the solidarity of their union brothers has established.

Accordingly, certiorari should be denied.

Respectfully submitted,

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